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DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
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Rationale regarding substantive modification of three existing *General Aquatic Resource Alteration Permits*

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This document represents the rationale for issued substantive modifications related to minor reservoir shoreline alterations to three existing *General Aquatic Resource Alteration Permits* (ARAP GPs) by the Tennessee Department of Environment and Conservation, Division of Water Resources. The purpose of these revisions is to better align these ARAP GPs with the federal Regional General Permit 20-RGP-01 covering minor alterations on selected reservoirs managed by the U.S. Army Corps of Engineers' Nashville District, which was recently certified by the Department. The draft permits were put onto Public Notice and made available for comment on November 17, 2020. A Public Hearing was also held on December 17, 2020 to provide additional opportunity to inform the public and receive formal comments. No comments were received during the comment period, which ended on December 28, 2020.

The valid duration of a permit under the *Tennessee Water Quality Act of 1977* is five years. The Department must therefore re-issue or deny the general permits every five years. The subject general permits were initially issued on April 7, 2020. The final versions of these revised *General Aquatic Resource Alteration Permits* will be issued for a remaining term up to April 7, 2025, to be concurrent with all other existing ARAP General Permits.

I. Background

Under the *Tennessee Water Quality Control Act of 1977*, T.C.A. §§ 69-3-101 to -148 (the "Act") where the Commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, the Commissioner may use a general permit to authorize alterations to waters for specific categories of

activities that are substantially similar in nature. In the case of Aquatic Resource Alteration Permits (ARAPs), for habitat impacts that do not result in appreciable permanent loss of resource values (and therefore will result in no more than *de minimis* degradation without mitigation), or water withdrawals that cause no more than *de minimis* degradation, a general permit may be issued.

Notices of coverage by the Division of activities that qualify under general permits also serve as a section 401 Water Quality Certification pursuant to the federal Clean Water Act. The Division has issued minor revisions to three General ARAPs, that authorize alterations for various categories of activities that do not result in an appreciable permanent loss of resource values and will cause no more than *de minimis* degradation, as follows:

Revisions of existing General Permits

- Bank Armoring and Vegetative Stabilization
- Minor Dredging in Reservoirs and Ponds
- Construction of Public Access Structures and Boat Ramps

On September 10, 2020, the Nashville District Corps of Engineers issued Regional General Permit 20-01 (20-RGP-01), authorizing certain categories of minor structures, fill and work in specified reservoirs within the states of Kentucky and Tennessee that are owned and managed by the U.S. Army Corps of Engineers (USACE).

The Regional General Permit 20-RGP-01 allows the USACE's Project Natural Resources Manager for each specific reservoir to be the lead in federal agency review for a subset of minor activities, and a valid Shoreline Use Permit from them would serve as Section 404 authorization without duplicative review from the USACE's Regulatory Division.

Permits are required for shoreline development activities by the Corps of Engineers under section 10 of the *Rivers and Harbors Act of 1899* and section 404 of *The Clean Water Act*; and by TDEC under *The Water Quality Control Act of 1977* and Section 401 of *The Clean Water Act*. The primary benefit of the Corps of Engineers' Regional General Permit (20-RGP-01) is to avoid increased permit verification times by reducing unnecessary coordination between the USACE's Project Natural Resource Manager and the Regulatory Division, for this limited subset of minor shoreline activities.

TDEC provided comment on the proposed 20-RGP-01, and subsequently provided conditional Section 401 Water Quality Certification of the Regional General Permit on August 5, 2020. That certification is conditioned on limitations and compliance with the existing ARAP General Permits, and to align with the analogous conditional certification of

Programmatic General Permit 18-01 for similar activities on reservoirs managed by the Tennessee valley Authority in 2018.

The goal of the State's 401 Certification of 20-RGP-01 and the revisions to these three related ARAP GPs is to provide a more streamlined and efficient permitting pathway for stakeholders, for activities the Division has reasonable assurance will represent no more than *de minimis* degradation individually and cumulatively under review of the USACE Resource Managers and conformance to the terms and conditions of the TDEC General ARAP Permits. In order for TDEC (and stakeholders) to take advantage of these benefits, it must not only provide a water quality certification under section 401 of *The Clean Water Act* for the activities conducted under 20-RGP-01, but also make revisions to these State general permits. Because TDEC has general permits for these activities under *The Water Quality Control Act of 1977* already in place, it must additionally amend those permits to remove the requirement of application and written authorization so that the subset of activities covered under the RGP can be authorized without contacting TDEC directly.

II. Qualifications for proposed activities to be eligible for General Permit coverage

The commissioner must first make a determination that the category of activities or discharges would be appropriately regulated under a general permit, including that they represent specific categories of activities that are substantially similar in nature. For the revisions to the existing General Permits, the Division continues to believe that they do represent discreet subsets of activities that are relatively common in nature, and have a limited array of construction techniques and potential water resource impacts for each covered activity. Therefore, the Division can create a set of permit conditions for each subset of activities covered under a specific General Permit that can adequately regulate the various projects that may be eligible for coverage under each specific General Permit.

The Division has had many years of experience with reviewing proposed activities, providing coverages, and evaluating outcomes for projects covered under these existing General Permits. Most have been in place in one form or another for decades, and the evolution of the specific language in these permits has been informed by that experience, including the revisions issued currently. The specific descriptions of activities intended to be covered under each General Permit, combined with the various conditional limitations as to the size, scope, nature, construction techniques, and eligible water resource types found in each General Permit will ensure that activities covered will in fact and in practice represent specific categories of activities that are substantially similar in nature and will result in only *de minimis* degradation individually and cumulatively.

The Division has made a final determination that the proposed minor revisions to these three *General Aquatic Resource Alteration Permits* do represent specific categories of activities that are substantially similar in nature which are appropriate for a general permit.

Please note that limitations and exclusions from coverage in these general permits do not necessarily mean that an activity cannot be authorized. In most cases, these provisions simply mean that the proposed activity is of such a scale that the procedural and substantive provisions applicable to individual permits are necessary to ensure full public participation and protection of Tennessee's water resources.

III. *De minimis* degradation and appreciable permanent loss of water resource values

The commissioner must also ensure that the category of activities to be authorized under a general permit will result in no more than a *de minimis* degradation of habitat (or effects from water withdrawals) individually and cumulatively, and does not represent an appreciable permanent loss of water resource values. These thresholds for General ARAPs stem from the Act, T.C.A. § 69-3-108(l), the Antidegradation Statement, Rule 0400-40-03-.06, and the rules governing ARAPs, Rule 0400-40-07-.04(2). They necessarily limit the size, scope, nature, construction techniques, and eligible water resource types for activities eligible for coverage under a General Permit, and are the reason for many of the general and specific conditions found in each General Permit.

Each General Permit has its own set of descriptions of activities eligible for coverage and specific conditions the Division believes will ensure the impact thresholds described above are not exceeded, and there are also several key general conditions found in most or all of these permits that also assist in providing this assurance. The revisions to these general permits do not expand the scope or limits of activities authorized under the general permits; the changes eliminate some notification requirements for minor activities on certain specified USACE reservoirs. This is to accommodate a more efficient permitting process between agencies. TDEC worked with the USACE in the development of 20-RGP-01 to ensure the scope of activities eligible would be limited in scope and nature, and would conform to certain key conditions. Based on the experience of both Division and USACE staff over the last several years, the Division has reasonable assurance that the changes will not result in significant additional degradation, either individually or cumulatively, than what has been historically authorized under the existing general permits. In addition, using information tracked through the USACE's permitting process and TDEC tracking data, we are committed to quantifying projects that receive coverage under these revised general permits' non-notification provisions during the next cycle of general permit reissuance.

In accordance with the Tennessee Antidegradation Statement (Rule 0400-40-03-.06), the Division has made the final determination that activities authorized under the three *General Aquatic Resource Alteration Permits* proposed for revision will result in no more than *de minimis* degradation of water quality and will not result in an appreciable permanent loss of resource values.